(4)

No. 90-263

In The

Supreme Court of the United States

October Term, 1990

DELORIS M. ADAMS and GRADY C. ADAMS,

Petitioners,

v.

LEISURE DYNAMICS, INC., and VISTA HOST, INC., a joint venture, d/b/a HOLIDAY INN NORTH,

Respondents.

On Petition For Writ of Certiorari To The United States Court Of Appeals For Eleventh Circuit

PETITIONERS' REPLY BRIEF

RICHARD B. DAVIS, JR.
Davis & Meadows, P.A.
Counsel of Record for Petitioners
408 W. University Ave., #601
Gainesville, FL 32601
(904) 376-1100

September 4, 1990

The most important issue is the abuse and misplaced reliance by the Courts below on this Court's opinions in Matsushita Electrical Industrial Company, Ltd., et al., vs. Zenith Radio Corp., 475 U.S. 574 (1976); Celotex Corp. vs. Catrett, Administratrix of the Estate of Catrett, 477 U.S. 317 (1986); and Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), all of which require the party moving for the summary judgment to clearly establish the non-existence of any genuine issue of fact that is material to a judgment in his favor. Instead, the Court below relied upon its own determination of fact that there was no negligence. That is an issue solely for a jury to decide, and in the absence of a jury to determine her entitlement to relief under Florida substantive law, the Petitioners' State and federal right to jury trial has been abrogated.

While the Respondents may argue that this is an insignificant case and not one worthy of nation-wide attention such as the cases with which this Honorable Court normally concerns itself, the Petitioners disagree. This is a very serious case at a time in our nation when the right to trial by jury to resolve disputes is under heavy attack by the insurance industry and corporate business interests such as the Respondents herein, and it is incumbent upon this Court to protect individual citizens from judicial interventionists' dilution of dispute resolution by jury. The entry of the summary judgment in this cause not only prevented a jury trial of the Petitioners' disputed issues of fact, it also denied the Petitioners the very beneficial effects of alternate dispute resolution, such as arbitration and mediation. The Respondents, and others

like them, are having a heyday by encouraging inexperienced magistrates to rule on such a grave issue as a person's right to compensation for a wrong done them, and by encouraging the misapplication of the holding in the three cases, Matsushita Electric Industrial Co. vs. Zenith Radio Corporation, 475 U.S. 574 (1976); Anderson vs. Liberty Lobby, Inc., 477 U.S. 242 (1986); and Celotex Corporation vs. Catrett, 477 U.S. 317 (1986). This Court has an opportunity, four years subsequent to the holdings in those cases, to review the application of those holdings to a simple negligence case in the State of Florida where the substantive law comes down on the side of the non-moving party when it comes to negligence cases.

Page 2 of the Respondents' Brief in Opposition, "STATEMENT OF THE CASE,"

succinctly demonstrates the disputed issue of fact. The Respondents' contend, "...The Petitioner did not know why she fell and there were no eyewitnesses." The Petitioner clearly knew why she fell. She fell over the table. What she stated in her deposition was that she did not see the table and did not know what she fell over at the time that she fell. If she had, she obviously would have avoided the table. The reason she fell was that the table was not "in plain view," but was, in fact, effectively concealed by the Respondents' failure to properly place it and to follow its own operating procedures of having an eye-catching arrangement on the table to attract one's attention to the existence of the table and thereby avoid the very incident which occurred.

It is, however, that one statement in the Petitioner's deposition upon which

the Magistrate latched to support her contention that there was no negligence. When the entire deposition and all the record evidence is read *in para materia*, it is clear that the Petitioner knew, after she fell, that she had tripped across the low table, although she did not know it before she fell, but only after she came to and recognized it as being the obstacle in the most direct path to the front desk. For these reasons, this Court should grant certiorari to allow a full review of the application of the law to the facts in this case.

Richard B. Davis, Jr.
DAVIS & MEADOWS, P.A.
Attorney for Petitioners
408 W. University Ave., #601
Gainesville, Fl 32601
(904) 376-1100